## Automotive Armature Co., Inc. and Charles Pugh. Case 25-CA-11797

## June 1, 1981

## **DECISION AND ORDER**

On March 4, 1981, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions, a reply brief, and a brief in support of the Administrative Law Judge's Decision.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge his recommended Order, as modified herein.<sup>2</sup>

The Administrative Law Judge, inter alia, properly held that Respondent violated Section 8(a)(1) of the Act by discharging Pugh on January 18, 1980. In discussing this action, he stated that the principal issue is whether Respondent was "wholly or partially motivated" by Pugh's suggestion to his fellow employees on January 11 that they go on strike to secure a raise in pay. Although the Administrative Law Judge concluded that the discharge was "substantially, if not solely motivated" by Pugh's strike talk, he nevertheless found that all other reasons given by Respondent for discharging Pugh were pretextual. In this connectin, the Administrative Law Judge found, and we agree, that Respondent was not motivated by (1) Pugh's request for a 1-day delay in starting his December 26, 1979, run; (2) his delayed departure with respect to another run until late afternoon on January 2, 1980; or (3) his failure to attend the company meeting on January 11.3 Thus, despite the Administrative Law Judge's use of the terms "in part" and "substantial" with respect to Respondent's motivation, it is clear from his elimination of all other reasons as pretextual that he in effect held that the discharge was solely motivated by Pugh's suggestion to other employees that they engage in a strike or work stoppage. 5

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Automotive Armature Co., Inc., Mooresville, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order, as so modified:

Add the following paragraph as 1(d):

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act."

## DECISION

## STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon unfair labor practices filed in Case 25-CA-11797 on January 30, 1981, by Charles Pugh, an individual, herein called Pugh or the Charging Party, the General Counsel, on behalf of the Regional Director for Region 25, issued a complaint against Automotive Armature Co., Inc. (herein called Respondent or Company) on March 6, 1980.

The complaint in substance alleged that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights; by threatening its employees with discharge if they talked about engaging in a concerted work stoppage; by forbidding its employees to talk about engaging in a concerted work stoppage; and by discharging an employee for discussing employees engaging in a concerted work stoppage, all in violation of Section 8(a)(1) and Section 2(6) and (7) of the Act.

On March 11, 1980, Respondent filed an answer to the complaint denying that it has engaged in any unfair labor practices as alleged in the complaint.

<sup>&</sup>lt;sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge made, and we hereby correct, the following inadvertent errors which, however, do not affect the validity of his findings: (1) Driver Charles Pugh was the fourth rather than the third most senior driver. (2) Respondent President Jack McGuire questioned Pugh on January 11 rather than January 5, 1980, concerning the completion of his run. (3) Pugh returned to the garage from another run at 7:15 p.m. rather than 7:15 a.m. on January 17, 1980. (4) Driver William (Chet) Kindel was called into McGuire's office on January 18 rather than January 17, 1980.

2 As Respondent's unfair labor practices do not warrant the broad

<sup>&</sup>lt;sup>2</sup> As Respondent's unfair labor practices do not warrant the broad Order recommended by the Administrative Law Judge, we shall include "narrow" language in the Order. See *Hickmott Foods. Inc.*, 242 NLRB 1357 (1979).

<sup>&</sup>lt;sup>3</sup> The Administrative Law Judge erred in stating that Respondent on January 21, 1980, invoked group I of its rules and regulations which requires a series of prior warnings for absenteeism. Although Respondent

in fact cited group IV which provides for discharge following and employee's first offense in refusing to carry out a supervisor's instructions and intentionally slowing down or interfering with production, this purported reason for the discharge 3 days after it took place has no merit in view of its character as an afterthought and the Administrative Law Judge's holding that Pugh's strike talk was the only reason for his termination.

<sup>&</sup>lt;sup>4</sup> In accordance with Wright Line, a Division of Wright Line, 251 NLRB 1083 (1980), we disayow such language.

<sup>&</sup>lt;sup>5</sup> See Limestone Apparel Corp., 255 NLRB No. 101 (1981)

The hearing in the above matter was held before me in Indianapolis, Indiana, on August 6 and 7, 1980. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

## FINDINGS OF FACT

#### 1. JURISDICTION

Respondent Automotive Armature Co., Inc., is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana, where it has maintained a principal office and place of business in Mooresville, Indiana, herein called the facility, where it has always been engaged in the manufacture, sale, and distribution of rebuilt automotive and related parts.

Respondent, in the course and conduct of its business operations, during the calender year ending December 31, 1979, sold and shipped from its Mooresville, Indiana, facility, products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Indiana. During the same representative period, Respondent, in the course and conduct of its business operations, purchased and received at its Mooresville facility, products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Indiana.

The complaint alleges, the answer admits, and I find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background Facts

Respondent is an Indiana corporation with its principal place of business located in Mooresville, Indiana, where it is engaged in rebuilding automotive electrical parts, such as generators, starters, and alternators. A significant part of the operations of Respondent's business involves the picking up of such parts for repair as well as the delivery of the repaired parts to various locations in the States of Indiana, Kentucky, Tennessee, Michigan, Missouri, Illinois, Wisconsin, and Ohio.

To further carry out the pickup and delivery aspects of its business operations, Respondent has employed and maintained seven truckdrivers. They were hired in the following order; Bob Whitlow—who was off on sick leave until January 21, 1980, Chet Kindale, Charles (Bud) Pugh, John Wagner, Paul (Fuzz) Bain, Luther Ridgeway, and Daniel (Danny) Sparks.

Respondent also employs Marvin Sparks (father of Danny Sparks and husband of Rosie Sparks), as foreman over the garage and maintenance of tractors and trailers. It employs Rosie Sparks as the dispatcher of trucks and the maker of assignments for Plant I. In total, Respondent employs approximately 300 people at its Mooresville facility, and it utilizes diesel road drivers and garage mechanics.

At all times material herein, the following named persons are now, and have been at all times material herein, supervisors of Respondent within the meaning of Section 2(11) of the Act; Jack McGuire—President, Marvin Sparks—garage foreman, and Rosie Sparks—dispatcher.

During Bob Whitlow's period of sick leave in January, Luther Ridgeway, who works part time in the garage and drives part time (road and city), drove full time in Whitlow's place. Respondent's drivers are paid 50-hours pay regardless of the time they spend on the road. They are paid \$6.05 per hour plus travel expenses.

In addition to the eight above-named States to which its truckdrivers drive, they also drive what are called warehouse runs to Atlanta, Georgia, New Jersey, and Dallas, Texas. These runs are highly preferred runs because the warehouse employees do the loading and unloading, and the driver has no stops between these destinations and its Mooresville facility.

In December 1979 and January 1980, Respondent employed 80 to 100 employees on the second shift and 200 employees on its first shift.

Respondent's Exhibit 2, "Rules and Regulations for Safety and Discipline," which had been in existence for the past several years, provided as follows:

## Regulation Group I:

Third Offense
Fourth Offense
Fifth Offense
Sixth Offense
Discharge

Verbal Warning
Written Warning
3-Day Suspension
Discharge

Jack McGuire, president of Respondent for the past 7 years, participates in the daily operations of the plant and he encourages employees, including drivers, to talk to him and to bring him their problems. He further testified that the above-mentioned rules and regulations for safety and discipline are followed and progressively enforced by Respondent.<sup>1</sup>

## B. Truckdriver Duties and Assignments

A composite of the essentially undisputed and credited evidence established that Respondent's road drivers make runs to auto parts stores in the 11 States heretofore named, during which runs they may make from 3 to 28 or 30 stops, to either pick up auto parts to be rebuilt, or to deliver such parts that have been rebuilt. The pickup and loading and the delivery and unloading procedure is accomplished by the drivers wheeling a metal drum container of parts onto an air hoist winch on the trucks. The road drivers also make one-stop runs to automotive warehouses where warehouse employees perform the loading and unloading duties. These runs, generally to Atlanta, Georgia, Dallas, Texas, and New Jersey are highly preferred by the drivers because generally there are no intervening stops and they have no loading and unloading responsibility. Additionally, because such runs are highly preferred, they were assigned to the most

 $<sup>^{\</sup>rm T}$  The facts set forth above are essentially undisputed and are not in conflict in the record.

senior drivers during the period with which we are concerned herein, December 1979 and January 1980.

Each road driver has the same regular runs assigned for the same week (4 weeks out of each month), intermingled with a few extra runs. The warehouse runs are generally assigned during the 5th week of the four 5-week months.

In December 1976, truckdriver Pugh refused to take a run because he could not use his truck which had to be repaired. He was ordered to take another truck and he refused to do so. In March 1977, Pugh refused to drive another run and he was discharged. In October 1977, Respondent's garage foreman, Marvin Sparks called Pugh and asked him if he would like to have his old job back. Pugh said, "Yes" and went to the office where President McGuire told him he, McGuire, would rehire him on one condition, if he would get along with dispatcher Rosie Sparks, go where she assigns him, and not refuse to do so. McGuire also told Pugh if he disagrees with an assignment made by Rosie he should complete the assignment and take up his grievance with him, McGuire.

On Friday, December 11, 1979, Rosie Sparks assigned Pugh to a warehouse run to New Jersey. When he was assigned a regular run on December 26, 1979, Pugh called Rosie and requested permission to delay his scheduled run until the next day, December 27. Rosie granted Pugh's request, provided he completed his assignment. Pugh departed on the assignment the following morning, December 27, and completed 80 percent of the run. He was not disciplined for not completing the entire run. Such request by drivers to delay departure have been made and approved by Respondent on several previous occasions.

Respondent enclosed with its Christmas gift certificate to all employees, a notice (G.C. Exh. 4) dated December 21, 1979, informing employees of a company meeting scheduled for January 11, 1980. A notice (G.C. Exh. 5) was also dated and posted on the bulletin board January 2, 1980, further notifying employees about the company meeting on January 11.

On January 2, 1980, Pugh was assigned a 28-stop selfrun to Michigan while other drivers, some with less seniority than Pugh, were given an extra warehouse run. On the day before, January 1 fellow truckdriver Fuzz Bain told Pugh that Rosie permitted Bain to select the warehouse run to Atlanta, Georgia. Since Pugh was third on the seniority list, with only Bill Kindale and Chet Kindale being senior to him, and Bob Whitlow having been absent on extended sick leave, Pugh felt he should have been given the preference for a warehouse run. Consequently, instead of departing on his Michigan run at his usual departing time 6 or 7 a.m., Pugh went to the office about 8 or 9 a.m. and asked Rosie for McGuire. Rosie informed him that McGuire was not there and may not be in until later. Pugh requested her to call him (Pugh) at the garage when McGuire arrived and Rosie agreed to do so.2 Pugh then left the office and went to the garage to wait for McGuire.

Pugh received a call around 3 p.m. at the garage and he went to the office. In the presence of Rosie Sparks, Pugh told McGuire that he felt Rosie had treated him unfairly in not assigning him a warehouse run while she had assigned a warehouse run to less senior drivers. Pugh also expressed an interest in the regular Atlanta run if Whitlow, the most senior driver, did not return. McGuire said if it could be worked out with Rosie and the seniority list, Pugh could have it. The conference ended. Pugh said that, after he returned from his Michigan run on January 2, McGuire came to the garage and asked him if he had completed his Michigan run, and he replied, "Yes, all except two, the Tower, Michigan, and Onaway, Michigan stops." Pugh testified he returned on January 5 at 3:30 p.m. . . . and McGuire did not display any dissatisfication or warn him about not completing the run. McGuire did not deny this statement. Pugh was nevertheless assigned a junk warehouse run that weekend.

On the day of the scheduled meeting, January 11, William (Bill) Kindale was not on a run but reported to the garage just after noon to await the Company's called meeting. Shortly thereafter, while returning from the office, he saw McGuire and asked him if there was any chance of his getting a raise. McGuire told him business was slow, the Company was in debt, and he could not see it at this time. Kindale then asked if he (Kindale) slept in his truck could he get a raise and McGuire said he would check into it and let him know later. Bill Kindale returned to the garage where he met fellow workers John Wagner, Chet Kindale, Bud Pugh, and Garage Foreman Marvin Sparks. Kindale told them that they were not going to get a raise. William Kindale, Jr., further testified that Bud Pugh initiated the following conversation:

A. Well, Bud Pugh asked John if he wanted to go out on a strike with us, that he wasn't going to get no raise. And John Wagner told him he needed the raise but he wasn't going to go out on no strike.

Q. Okay. Do you recall whether Marvin Sparks said anything?

A. Yes. He said that we better stop and think about it. You know, business was slow and the Company was in bad shape and we'd better think it over for a while.

Q. Do you recall anyone else saying anything to John Wagner after that, after his answer?

A. Yes.

Q. And who said it and what was said?

A. Well he asked John if he would go out on a strike with us and John told him, he said no, he needed a raise but he also needed his job. And then I said, "John, you wouldn't go out with us?" And he said no. And then Luther Ridgeway, he was there, and he had some comments to make.

Q. Did any of the drivers at that time—was Marvin Sparks present at this time?

A. Yes he was.

Q. Did any of the drivers, other than John Wagner, say that they would not go out on strike? A. No.

<sup>&</sup>lt;sup>2</sup> Pugh denied Rosie told him to go on his run, and I credit his denial in this regard because I was persuaded by Rosie's demeanor and other evidence of her conduct in dealing with Pugh, that she was emotionally proemployer in attitude and was not testifying objectively.

With the exception of some witnesses, John Wagner and Chet Kindale, other witnesses testified that Bud Pugh's actual words were, "We shouldn't roll," rather than, "Let's strike." Wagner replied, "Sure, I could use a raise but I need my job too." All of the drivers present agreed they needed a raise. They discussed sleeping in their trucks as a means of cutting expenses and possibly making it feasible for a raise. Wagner acknowledged that at a later point in time Pugh told him he was just kidding, "we're not really going on strike." He also corroborated Bill Kindale's testimony that Garage Foreman Marvin Sparks said, in response to the suggestion to strike, "That's the wrong way to go about it, let's talk to Jack." Bill Kindale said Marvin Sparks said the Company was in bad shape and they were not a union and therefore, could not go on strike anyway. The scheduled company called meeting was announced on the intercom system several minutes after 3 p.m. About 3:30 p.m., William Kindale went to the meeting and Chet Kindale and Bud Pugh remained in the garage. Foreman Marvin Sparks told them as he was leaving that they ought to go to the meeting.

At the meeting, McGuire told the employees the status of business in the automotive industry was slow and things did not look very good. He also told them that the Company was having trouble with defective products; that it had a nurse and that fact had helped the Company on their insurance. In the past Respondent usually gave its drivers a raise every year except on May 19, 1979, because it was unable to do so. A part of the reason for the January 11 meeting was to inform the drivers that Respondent might not be able to give the raise this year. The mild winter contributed to slow business because starters and generators tend to break down more frequently in cold weather. During the meeting, dispatcher Rosie Sparks noticed that Chet Kindale and Bud Pugh were not present. At the end of the meeting, she went to McGuire and asked him if he had noticed that some of the truckdrivers were not present. McGuire said, "No. Who?," and she said, Bud and Chet. She said McGuire then swelled up and said, "[t]hat's it. I've had it. He's finished." Rosie further testified that as she was leaving the meeting she asked her husband, Foreman Sparks, why Bud and Chet did not come to the meeting and Sparks shrugged his shoulders and said, "Well Bud is over there talking about not rolling Monday." Rosie testified that she went immedietely to McGuire and informed him about what Marvin told her Pugh had said about not rolling.

## C. Respondent's Discharge of Charles Pugh

On January 14, 1980, Pugh left for his regular Ohio and Detroit run about 6 a.m. He returned Wednesday about 8:15 p.m., went to his clipboard and noticed that he was not scheduled for a run. He went home and reported to the garage the next morning, Thursday, about 7:15 a.m. He was not given an assignment. On Friday, January 18, McGuire called him at home around 1:30

p.m. and asked him if he would come to the office, he would like to talk with him. Pugh reported to McGuire's office about 2 p.m., and in the presence of Rosie, he testified the following conversation occurred.

McGuire told him to give his expense papers to Rosie and asked him to go into the office. Pugh entered the office, followed by McGuire who closed the door and said, "We're calling it quits again." Pugh said he asked. "What are you talking about?" and McGuire said, "For your not going to that company meeting is what broke the camel's back." He asked McGuire was he being fired for not attending the company meeting and McGuire said, "Yes." He asked McGuire if he knew he was not the only driver who did not attend the meeting and McGuire said, "Yes." Pugh asked him, "Did you fire Chet Kindale?" and McGuire said, no, because "Kindale did not have points against him like you do." "When I hired you before, you said that you would get along with Rosie Sparks." Pugh testified that their conversation continued as follows:

And I said, "I was getting along with Rosie."

And then he asked me, he said, "You've never had to ask me for a raise before, have you?" [Emphasis supplied.]

And I said, "No, I haven't."

So he got up and left the room, and he came back with a piece of paper with some figures on it, and he was telling me that he couldn't afford to give a raise, which I did not pay much attention to him because I was already fired at the time.

On Monday, January 21, Pugh called dispatcher Rosie, and their conversation was as follows:

A. I asked Rosie if I had been fired for not going to a company meeting.

She said yes.

And I said, "Well, that's awful strange." I said, "By your company rules I should have got some kind of a warning a layoff, or something like that."

And she said the company rules don't mean anything to the drivers. And then she said, "I'm on company time. I don't have time to talk to you," and she hung up on me.

According to Rosie, she testified that she replied, "Bud, you know why you were fired. You didn't do the things you were suppose to, and then you didn't attend the company meeting."

About a week after Pugh was discharged, William Kindale, Jr., testified that he had a conversation with Garage Foreman Marvin Sparks which was as follows:

A. Well, he said that he told his wife Rosie Sparks that Bud was over there talking about going on a strike and she told Jack McGuire that Bud was talking about going on a strike. And he said he liked Bud Pugh and he hated to see him lose his job.

William Kindale II testified that he had never been advised by company officials that his presence was re-

<sup>&</sup>lt;sup>3</sup> I do not deem any significant difference between "Let's strike" and "We shouldn't roll," for all practical purposes, and I find that Pugh meant strike or work stoppage in any event.

quired at company meetings; and that he had missed company meetings but he was on the road at the time.

Kindale further testified that he remained in the garage during the company meeting with Bud Pugh and left the premises about 4 p.m. He said shortly after Manager Sparks left the garage to attend the meeting, the telephone rang and Pugh answered it. It was Rosie asking for Marvin Sparks and Pugh told her he had left for the meeting. Pugh did not tell him that Rosie had told him on the telephone to attend the meeting. When he reported to work on Monday, January 14, about 12:30, he said he saw and gave the time of day to Marvin Sparks and Jack McGuire and neither said anything to him about his absence at the meeting on Friday. He went on his run that day to Dallas, Texas, and returned on Thursday, January 17, about 11 p.m. He went to the garage Friday morning and noted that his paycheck was not on the clipboard so he called the office and inquired about his check. He was informed that Jack McGuire had it and wanted to see him. He went to the office and his conversation with McGuire was as follows:

Q. And what do you recall was said at that time?
A. Well, I went in and set down and he said, "Let's talk."

And I said, "All right." And I just set there and he said, "You waiting on me to start?" I said, "Yeah." And he said, "I hear you've got a problem." And I said, "Other than needing a raise I don't have any problem." He said, "About the Company meeting, why wasn't you there?" I said, "I didn't think it was a have to thing. I thought it was more for the employees in the plant than for anybody else." And he told me that the meeting was for all the employees and that he didn't care if we had a meeting everyday, that if we had a meeting I was to be there because I talked to the customers and I needed to know what was going on. And he said, "We need people that's 100% for this Company." [Emphasis supplied.] And I told him that I'd always been for the Company. That's about all that was said.

Thereafter, Kindale said McGuire showed him a piece of paper with figures on it explaining that there were 400 other people in the plant who needed a raise but the Company could not grant it at this time. He said he observed McGuire, whom he has known for 6 years, was quite upset. He said after Pugh was discharged he had the following conversation with Foreman Marvin Sparks:

A. We was just talking about it and Marvin said that Bud shouldn't have been talking about going on strike since we wasn't Union or nothing. [Emphasis supplied.] And he said that he happened to mention to Rosie that Bud was over there talking about going on strike and that he never thought that she'd tell Jack. That was about all that was said.

William Kindale II further testified that he has known of a less senior driver to be assigned an extra warehouse run over a senior driver's preference to accept it. He also

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stated that he had failed on about five occasions to make all of the stops on a run and was not reprimanded. The last time this occurred was in December, around the Christmas season, and also during the New Year's week in January. However, he indicated that neither incident occurred during a short week and he did not have to return to complete those runs. Rosie usually told him to get them the next time. He was off 1 day to visit his dentist and he did, as is required, complete his run for the remainder of the week.

According to Pugh's logsheets, he did not leave on the January 2 run until the next day, which Rosie stated that she did not learn of until Pugh turned in his log sheets a week or two after the trip. Rosie said Pugh's day off on December 26, was unusual because it was the first time a driver ever requested a day off during a short week (3 days), but she admitted Pugh essentially completed the run. She said after the meeting with McGuire on January 2, the latter asked her to reconstruct Bud Pugh's runs for the month of December so he could see for himself. After she reconstructed Pugh's record on January 11, she found she had given Pugh a warehouse run to New Jersey in December which she had not mentioned to McGuire because she did not remember at the time. When she informed McGuire about this he exclaimed, "Had you told me that, or had I known that when Bud was here on January 2, I would have dismissed him.'

President Jack McGuire testified that he made the decision to discharge Pugh on January 11, 1980, because he refused to go out on a run on January 2, 1980, until he spoke with him (McGuire), and because Pugh called in on December 26, 1979, and requested permission to delay for 1 day, going out on a scheduled run. He said his reasons were cumulative and that he communicated these reasons to Pugh when he discharged him on January 18.

## Analysis and Conclusion

The testimonial evidence of record is essentially without dispute or conflict. However, to the extent that it is conflicting, I was persuaded by the demeanor of employ-ee-witnesses Chet Kindale, John Wagner, and William (Bill) Kindale, as augmented by the circumstantial evidence as a whole, that their respective versions were truthful and Respondent's denial thereof was not.

Occasionally, witnesses testifying on direct examination will testify spontaneously and convincingly, but when cross-examination is undertaken they not infrequently get gun shy, so to speak, and give the impression of being unsure or exceedingly cautious, even though they may be testifying truthfully. Witness Charles Pugh was such a witness until he heard the bench's comment reported. Thereafter, Pugh testified with improved recall and assurance as the bench thought he would. Since his testimony was also corroborated in a large part by the above-named witnesses, I was persuaded that his testimonial versions, which conflicted in minor respects with those of Rosie Sparks, were truthful, and hers were not.

Thus, the principal issue presented by the credited testimonial and circumstantial evidence herein, is whether Respondent's discharge of Charles (Bud) Pugh on January 18, was wholly or partially motivated by Pugh's suggestion to fellow employees on January 11, that they go on strike for a raise; or was Respondent's only reasons for discharging Pugh, his failure to attend the company meeting on January 11, his requested 1-day delay in departure on December 26, and/or his delayed departure until late afternoon on January 2.

It is particularly noted that at the time of its discharge of Pugh on January 18, Respondent (McGuire) simply told Pugh, "We're calling it quits again," and when Pugh asked what are you talking about, McGuire said, "For your not going to that company meeting is what broke the camel's back." However, assuming arguendo, that Respondent's reasons for discharging Pugh were cumulative as it now contends, it is noted that although Pugh requested the 1-day delay on the December 26 run, his request was nevertheless approved during the short week (3 days) by dispatcher Rosie Sparks. The record does not show that Rosie Sparks expressed any dissatisfaction, or issued any warning for Pugh on his return from his delayed December 26 run. In fact, Rosie acknowledged that Pugh essentially completed the run. Under these circumstances, I find it difficult to conceive how Respondent can now contend Pugh violated any rule or disobeyed any order for which the delayed December 26 run can serve as any part of a basis for cause for his discharge. If anything, the incident as established by the credited evidence of record tends to reveal that Respondent is now asserting this incident as a pretext to reenforce its other contended reason for discharging Pugh.

Respondent also contends that a part of his reason for discharging Pugh was his delaying his run on January 2, until he had spoken with President McGuire (about 3 p.m.). Although the testimony of Rosie Sparks shows that McGuire asked Pugh if he could complete his trip and Rosie intervened, assuring McGuire that Pugh could complete his run, and Pugh agreed. The undisputed evidence shows that when Pugh returned at 3:30 p.m. on January 5, McGuire asked him if he completed his Michigan run. Pugh replied, "Yes, all except two, the Tower, Michigan and Onaway, Michigan stops." McGuire did not deny that he did not express any dissatisfaction or that he did not discipline Pugh for not making the two stops. Hence, the conclusion is inevitable that the evidence involving Pugh's January 2 run does not manifest any dissatisfaction by Respondent about the two omitted stops. I therefore conclude and find that Respondent either did not consider the delayed January 2 run as a basis for discharging Pugh, or that its reliance upon the latter incident is so miniscule until its pretextual nature is revealed thereby.

Finally, Respondent's contention that the straw that broke the camel's back was Pugh's failure to attend the company called meeting on January 11. While this reason standing alone appears to manifest some plausibility and credibility, all credibility of it is destroyed when it is considered in conjunction with the following factors:

1. Respondent's president, Jack McGuire, learned about Pugh's and Chet Kindale's failure to attend the January 11 meeting a few minutes after the meeting, when he was so informed by dispatcher Rosie Sparks.

- 2. Respondent (McGuire) did not in fact warn or discharge Pugh or Chet Kindale on January 11, when it claimed it decided to fire Pugh.
- 3. Although Pugh went on a run January 14, Respondent did not make any effort to contact him at the garage, or while he was on the road, or at his home, until about 1 p.m. on January 18, when McGuire called him at home and requested him to come into the office when he discharged him.
- 4. After telling Pugh he was fired on January 18, McGuire said to Pugh, "You've never had to ask me for a raise before have you?" and Pugh said, "No." This question by McGuire at this particular point in time, could only have had reference to Pugh and the other employees' garage discussion about a raise and Pugh's suggestion that they strike for a raise. That discussion and suggestion by Pugh took place only a few minutes before the company meeting on January 11, and President McGuire was informed about Pugh's suggestion by dispatcher Rosie Sparks only a few minutes after the meeting. Therefore, Respondent had knowledge of Pugh's concerted activity in suggesting a strike.
- 5. During a conversation about a week after Pugh's discharge, Garage Foreman Marvin Sparks told truck-driver William Kindale, "Bud shouldn't have been talking about going on strike since we wasn't union or nothing."
- 6. Respondent did not call Garage Foreman Marvin Sparks as a witness to testify affirmatively on its behalf, or to deny statements attributed to him by other witnesses.
- 7. When truckdriver William (Chet) Kindale returned from a run on January 14, he gave the time of day to President Jack McGuire and Garage Foreman Marvin Sparks and neither of them said anything to him about his nonattendance of the January 11 company meeting.
- 8. When truckdriver William Kindale returned from his Dallas run on January 17, he was called into the office about his not having attended the January 11 meeting. During the office conference, President Jack McGuire told him, "We need people that's 100 percent for this company." The latter statement, which was not denied by McGuire, could only have had reference to Kindale's failure to attend the meeting while he was in the company of, and/or in concert with Pugh, who had just previously suggested that the drivers strike Respondent for a raise.
- 9. Before discharging Pugh on January 18, President Jack McGuire did not comply with Respondent's rules and regulations for safety and discipline, Group I, outlined under topic A herein, but summarily discharged Pugh without issuing him a verbal warning for a third offense, a written warning for a fourth offense, a 3-day suspension for a fifth offense, as the rules provide and which McGuire, himself, testified he enforces progressively.
- 10. About a week after Pugh's discharge, Garage Foreman Marvin Sparks also told Bill Kindale in reference to his wife having told Jack McGuire that Bud was suggesting that the drivers go on strike for a raise, said he (Marvin Sparks) liked Bud Pugh and he hated to see

him lose his job. The latter statement clearly implied that Pugh was discharged for talking about going on strike. As such, it was a real threat of a coercive and restraining nature, on the exercise of employees' Section 7 rights, in violation of Section 8(a)(1) of the Act.

Upon the foregoing, I conclude and find that Respondent's discharge of Pugh was substantially, if not solely, motivated by his January 11 suggestion that the truckdrivers strike Respondent for a raise. Consequently, Respondent's discharge of Pugh was an interference with, coercion against, and a restraint upon the exercise of employees protected Section 7 rights (to suggest or in fact strike), in violation of Section 8(a)(1) of the Act. Hugh H. Wilson Corporation, 171 NLRB 1040 (1968). Pugh's advocacy was protected because it related to matters of mutual concern to all employees. Air Surrey Corporation, 229 NLRB 1064 (1977). Implied consent of other employees is presumed since there is no evidence of disavowal by all of them with respect to Pugh's suggestion of a strike. Akron General Medical Center, 232 NLRB 920 (1977).

It has been previously found herein that Respondent's second reason for discharging Pugh (his delayed departure on January 2 in order to complain about what he believed an unfair assignment system) was pretextual. However, assuming arguendo, that Respondent relied on Pugh's January 2 delayed departure and complaint as a reason for his discharge, the delay and complaint constituted a legitimate exercise of employees' protected Section 7 rights, and Respondent's reliance on it for discharge was a violation of Section 8(a)(1) of the Act.

Finally, I further conclude and find upon the credited and undisputed testimony of William (Bill) Kindale that about a week or two after Pugh's discharge, Garage Foreman Marvin Sparks told him that he (Sparks) had told his wife Rosie that Bud was over at the garage on January 11 talking about going on strike; and that he (Sparks) liked Bud Pugh and hated to see him lose his job. Such a statement by Garage Foreman Sparks, unquestionably a supervisor within the meaning of the Act, was an implied threat to truckdriver Bill Kindale that employees' jobs were in jeopardy if they talked about going on strike against Respondent. Such veiled threat was unquestionably an interference with, a coercion against, and a restraint upon the exercise of employees' protected Section 7 rights, in violation of Section 8(a)(1) of the Act. Milford Manor, Inc., 233 NLRB 1283 (1977).

# III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices warranting a remedial Order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent interfered with, coerced, and restrained its employees in the exercise of their Section 7 protected rights, in violation of Section 8(a)(1) of the Act; by discharging an employee for suggesting and talking about engaging in a strike or work stoppage with other employees; by forbidding employees from talking about engaging in a strike or work stoppage; and by threatening employees with discharge if they talked about engaging in a strike or work stoppage. The recommended Order will provide that Respondent make the employee discharged on January 18 whole for any loss of earnings within the meaning and in record with the Board's decision in F. W. Woolworth Company, 90 NLRB 289 (1950), and Florida Steel Corporation, 231 NLRB 651 (1977),4 except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act N.L.R.B. v. Enwistle Mfg. Co., 120 F.2d 532, 536 (4th Cir. 1941).

Upon the basis of the above findings of fact and upon the entire record of this case, I make the following:

#### CONCLUSIONS OF LAW

- 1. Automotive Armature Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. By discharging employees for suggesting and talking with other employees about engaging in a strike or work stoppage, Respondent violated Section 8(a)(1) of the Act.
- 3. By forbidding employees from talking about engaging in a strike or work stoppage, Respondent violated Section 8(a)(1) of the Act.
- 4. By threatening employees with discharge if they talked about engaging in a strike or work stoppage, Respondent violated Section 8(a)(1) of the Act.
- 5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER<sup>5</sup>

The Respondent, Automotive Armature Co., Inc., Mooresville, Indiana, its officers, agents, successors, and assigns, shall:

<sup>&</sup>lt;sup>4</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).
<sup>5</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

- 1. Cease and desist from:
- (a) Discharging employees because they suggest or talk about engaging in a strike or work stoppage.
- (b) Forbidding employees from talking about engaging in a strike or work stoppage.
- (c) Threatening employees with discharge if they talk about engaging in a strike or work stoppage.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Offer to Charles (Bud) Pugh immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights previously enjoyed, and make him whole for any loss of pay suffered by reason of the discrimination against him, with interest, in the manner described in the section of this Decision entitled, "The Remedy."
- (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay under the terms of this recommended Order.
- (c) Post at Respondent's plant and place of business located in Mooresville, Indiana, the attached notice marked, "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days hereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.
- (d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

It is further ordered that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

#### **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT restrain or coerce our employees in the exercise of their protected rights by:

- (a) Discharging employees for suggesting or talking about engaging in a strike or work stoppage.
- (b) Forbidding employees to talk about engaging in a strike or work stoppage.
- (c) Threatening employees with discharge for suggesting or talking about engaging in a work stoppage.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise and enjoyment of rights guaranteed them by Section 7 of the National Labor Relations Act, except to the extent that such rights may be affected by unlawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL, offer Charles (Bud) Pugh immediate reinstatement to his former position, or if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights previously enjoyed, and make him whole for any loss of pay suffered by reason of our discrimination against him with interest.

AUTOMOTIVE ARMATURE Co., INC.

<sup>&</sup>lt;sup>6</sup> In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."